

USDOL/OALJ Reporter

[*Brink v. United States Enrichment Corp.*](#), 2000- ERA-28 (ALJ Oct. 25, 2000)

U.S. Department of Labor

Office of Administrative Law Judges
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Date: October 25, 2000

Case No.: 2000-ERA-28

In the Matter of

RICHARD L. BRINK
Complainant

v.

UNITED STATES ENRICHMENT CORPORATION
Respondent

APPEARANCES

Richard L. Brink
Waverly, Ohio
For the Complainant

Timothy P. Matthews
Morgan, Lewis & Bockius LLP
Washington, D.C.
For the Respondent

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. § 5851, and its implementing regulations found at 29 C.F.R. Part 24. On October 20, 2000, Richard L. Brink, Complainant, and Timothy P. Matthews, counsel for the Respondent, filed a Joint Motion for Approval of Settlement Agreement and Dismissal With Prejudice. Attached to the Joint Motion was a Settlement Agreement. The Motion indicates that the parties have reached a mutually acceptable settlement and requests that a Recommended Decision and Order approving the settlement and dismissing this case be entered.

The 29 C.F.R. Part 24 Regulations contain no provision relating to the dismissal of a complaint by voluntary settlement. However, the Rules of Practice and Procedure for Administrative Hearings before this office found at 29 C.F.R. Part 18 are controlling and provide authority for the parties to reach a mutually acceptable agreement. 29 C.F.R. § 18.9(a)-(c). In whistleblower cases brought under the Energy Reorganization Act, Rule 41 of the Rules of Civil Procedure is not applicable where a stipulation of dismissal is based on an underlying settlement. Hoffman v. Fuel Economy Contracting, 87-ERA-33 (Sec'y Aug. 4, 1989). The settlement agreement must be reviewed and a determination made that the terms of the agreement are fair, adequate and reasonable. Bonanno v. Stone and Webster Engineering Corp., 97-ERA-33 (ARB June 27, 1997).

The Settlement Agreement has been reviewed in its entirety. It notes that the Complainant voluntarily requested a separation from the Respondent and he received a separation package and his employment was terminated based upon a voluntary reduction in force. Any compensation paid to Mr. Brink as a result of his voluntary separation is not considered a part of the consideration for the settlement action in this case. The Settlement Agreement does not provide for the payment of any additional dollars to the Complainant.

The Agreement contains releases by both parties to all claims and potential liability related to the Energy Reorganization Act, but the releases are not limited to that Act. Where a Settlement Agreement addresses matters in addition to a Department of Labor enforced whistleblower complaint, the other matters are not to be reviewed. Poulos v. Ambassador Fuel Oil Co. Inc., 91-ERA-16 (Sec'y Mar. 4, 1992).

The Agreement does not include a confidentiality provision but does include an agreement to pursue arbitration in the event a party suspects the other party of breaching the Agreement.

As construed herein, and following consideration of the entire Settlement Agreement, I find it to be fair, adequate and reasonable, and I believe it is in the public interest to adopt the agreement as a basis for the administrative disposition of this case.

Therefore, I recommend dismissal of this proceeding with full prejudice based upon authority conferred by 29 C.F.R. § 18.9.

Rudolf L. Jansen
Administrative Law Judge

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC

20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.8 and 24.9 as amended by 63 Fed. Reg. 6614 (1998).